

Disability Rights Project REPORT

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SPRING 1994

Office of Attorney General Scott Harshbarger

Dear Reader,



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Welcome to the first issue of the Disability Rights Project **REPORT**. Last June, I had the pleasure of announcing the exciting news that I had established a Disability Rights Project within the Civil Rights Division of my office. Fortunately, many of you were able to attend that event, and I enjoyed the opportunity to meet with those members of the disability community.

As I explained in June, vigorous enforcement of equal rights for individuals with disabilities has been an important focus of my administration. By inaugurating this Project, we have further expanded our ability to guard and enforce these important rights. Significantly, we established the Project within the Civil Rights Division to convey a critical message which recognizes and underscores the importance of disability rights as civil rights.

Building upon our past efforts, the Project is actively involved in community education and public awareness to prevent the denial of civil rights. When those efforts do not resolve the problem, we will vigorously pursue enforcement actions.

Toward that end, the Project has three priorities:

- A. access to municipal events and services;
- B. fair housing rights for individuals with disabilities; and
- C. access to and non-discrimination by private entities.

As you will learn from the Disability Rights Project **REPORT**, in each of these three priority areas we have already been able to achieve solid results, all of which have been resolved without filing suit.

The Project is directed by Stanley J. Eichner, an Assistant Attorney General in the Civil Rights Division, who has a long history of legal advocacy on behalf of individuals with disabilities. Working with him is Karin Raye, an experienced litigation paralegal who came to us from private practice specifically to work on the Project. You will find them to be very helpful when you contact the Project at (617) 727-2200 (V), (617) 727-4765 (TTY).

This newsletter will serve as a key means by which you, as a member of the disability community, can be kept fully informed of the work we have done, and our future goals. We plan to publish it twice a year. I hope and trust that communication will go in both directions, as you keep us informed of your ideas and concerns. We appreciate the very positive response the Project has received from the disability community.

We believe the Disability Rights Project will significantly contribute to the awareness of, compliance with, and enforcement of disability rights in Massachusetts. Through education and advocacy, the Office of the Attorney General, in partnership with the disability community, can use its resources to ensure full enforcement of civil rights for individuals with disabilities.

Sincerely,

Scott Harshbarger

ACCESS TO PRIVATE BUSINESSES

One of the Project's priorities seeks to ensure that private businesses afford access to and not discriminate against individuals with disabilities.

Telephone Service Center Access

One of the early complaints received by the Disability Rights Project was from the Cape Organization for the Rights of Disabled (CORD) and concerned access to phone services. An individual who is deaf experienced difficulty in attempting to obtain services at New England Telephone's (NET's) service center in Hyannis. The individual sought to clarify a billing dispute. Typically, a customer can resolve such issues by using a free phone in one of the company's service centers to talk to a NET supervisor. When this individual indicated his need to use a TTY (text telephone), he was informed that the customer service center did not have such equipment. Our follow-up factual investigation revealed that none of the phone centers were equipped with TTYs. When the Disability Rights Project contacted New England Telephone, the Company immediately responded to the issue, proposing a solution which not only served the needs of individuals in Massachusetts, but throughout the company's five-state service area. NET agreed to install text telephones (TTYs) in each of the 21 Residence Service Centers throughout New England.

Funeral Home AIDS Advisory

We have also used the issuance of statewide Advisories as an additional strategy for the promotion of community education and nondiscrimination. For example, when the Project learned that some funeral homes may have been assessing a surcharge for or were refusing to provide funeral services to people who had died of AIDS. After conducting a limited survey of funeral homes, which confirmed the existence of some of the problems, the Office of the Attorney General and the Mass. Board of Registration in Embalming and Funeral Directing (the state licensing and oversight agency) jointly sent a letter on May 10, 1993 [See "Aids

Advisory," 5/10/93 in "Materials Available" box, page 5] to all funeral home directors throughout the state. The Advisory informed the homes that 1) a refusal to provide services to those who die from AIDS violates state and federal laws, and 2) assessing a surcharge for such services would violate Title III of the ADA and the consumer protection laws. We have had a very positive response from advocates and the press as a result of this Advisory.

Effective Communication with Physician

An individual with a hearing impairment complained that a doctor was refusing to provide an interpreter for complex pre-natal exams. The doctor cited "undue burden" and "financial hardship" as his reason for not furnishing an interpreter for check-ups. Through a series of calls and negotiations, the doctor agreed to provide an American Sign Language interpreter for complex medical examinations.

Refusal to Accommodate

The Disability Rights Project received a complaint from an individual who had been treated in a rude and discriminatory manner when trying to get financial aid forms from an educational assistance program. As a result of his disability, the complainant spoke with severely slurred speech and walked with an unsteady gait. He explained the nature of his disability to the receptionist and requested some assistance in communicating. The receptionist refused his request and called security to have him removed from the premises. We called the Director of Personnel who immediately responded by sending a letter of apology to the individual and by taking disciplinary action against the employee involved. We also ensured that the agency provided ADA and disability sensitivity training to its employees.

Accessible Paralegal Graduation

Private universities are also covered under this priority area. An early complaint concerned a local university's plan to hold their paralegal graduation in an inaccessible location. Although the woman herself could have, with difficulty, managed

to attend the ceremony, several of her closest friends would have been precluded from attending the event. When the Project contacted counsel for the school, the school immediately agreed to move the graduation to a physically accessible location.

FAIR HOUSING ISSUES

Ensuring fair housing rights for individuals with disabilities, particularly those who encounter opposition to their desire to reside in the community of their choice, is also a Project priority.

AIDS Hospice

This office was contacted by representatives of St. Anne's Hospital concerning problems they experienced in their attempt to develop "Hope House," a 10-person residence for persons diagnosed with AIDS, in Fall River. Their chief obstacle was a provision in the city's zoning ordinances which prohibits group residences in Fall River by limiting such groups to four unrelated persons living together. Working with several Assistant Attorneys General from other divisions, a letter was sent to the City Solicitor which discussed how state and federal fair housing laws applied to the Fall River ordinance. As a result of the letter, the city determined that Hope House was not subject to the ordinance and issued a permit allowing the project to go forward.

Housing Authority Access

The Architectural Access Board (AAB) had held that various aspects of a Cape Cod housing authority violated state access requirements. After the Housing Authority continued to ignore orders of the agency, AAB referred the matter to the Attorney General's Office for enforcement. Through a series of negotiations, the Housing Authority reconstructed the problem areas and the accessible apartments are now in full compliance with state and federal law.

Pet Prohibition

A woman with a seizure disorder contacted this office when her landlord threatened to evict her,

based upon the presence of a dog in her unit, which violated the building's "no pet" rule. The complainant asserted that her dog had the ability to forewarn her of seizures. State and federal law requires that landlords make a reasonable accommodation in their rules, policies or procedures to ensure that an individual with a disability has an equal opportunity to use and enjoy a dwelling. Although not absolutely required by the laws, we were concerned the dog had not been formally certified as a seizure dog.

After we learned of a veterinarian who operates a kennel that trains and certifies seizure dogs from the Epilepsy Association of Greater Boston, we put the complainant and the kennel in touch with each other. Within a week, the kennel had certified the complainant's dog as a Seizure Alert Dog and initiated a "continuing education and training" program for both the individual and her dog. The complainant provided the landlord with the dog's certification and may now remain in her apartment.

MUNICIPAL ACCESS

Another priority area involves ensuring access to municipal events and services. We continue to enforce the May 1991 municipal access letter signed by Attorney General Scott Harshbarger and former Mass. Office on Disability Director Jim Gleich [see "Municipal Access letter" 5/91 in "Materials Available" box, page 5] which informed all municipalities that public meetings could no longer be held in inaccessible locations. Of course, since our letter was sent, Title II of the ADA has become effective, so the accessibility mandate is now even stronger. We have been able to resolve each of these matters amicably. Our recent work in this area includes:

▲ Our office was informed that the town of Wareham was planning to hold a special town meeting in an inaccessible location. We contacted the town Administrator and Chair Selectperson who agreed to move the meeting to a physically accessible building.

▲ Working with an advocate and the town of Carver, we were able to negotiate an agreement with the town by which it agreed to move all of its public meetings and hearings out of the inaccessible town hall and into accessible meeting space.

▲ After receiving a complaint from a disability advocate regarding the Clinton Board of Health's (BOH's) inaccessible public meetings, we contacted the Chairperson of the BOH who promptly agreed to move their meetings to an accessible location. We will continue working with the advocate and town officials to ensure that all town meetings are accessible to individuals with disabilities.

▲ A vote was taken during an inaccessible Hingham School Committee meeting despite the objections of disability advocates. It was agreed that all public meetings thereafter, would be conducted in alternative accessible sites, however, the advocates challenged the validity of the vote taken during that inaccessible meeting. Through a series of discussions, the school committee agreed to retake or ratify the vote in question.

▲ We were contacted by town officials from Sheffield, MA who were interested in the laws regarding inaccessible municipal events and services. As a result of our discussions, the town moved all of the meetings to an accessible location.

▲ We were contacted by an advocate from Marshfield who informed the Project that the town was holding municipal meetings and offering services in an inaccessible facility. After speaking with the town Administrator and conducting an in-depth site review, it was agreed that all meetings would be held off-site in an accessible location. The town then allocated a large sum of money for accessibility reconstruction of the Town Hall. In response to the good faith effort demonstration of the town, a modified agreement was reached by which meetings were allowed to be held on the first floor of the Town Hall as long as they were limited in scope and duration. The town also agreed to a stringent time-line for the reconstruction.

EMPOWERING LOCAL ADVOCATES

As a part of our partnership effort with the disability community, an important component of our work is the provision of backup and support to local advocates with a view toward empowering them in their efforts to advance the rights of individuals with disabilities. A disability rights advocate from the

south shore informed the Project that the town was charging individuals with disabilities a fee for public parking. By advising the town officials of the law pertaining to the issue and indicating that the problem had also been brought to the attention of our office, the advocate was able to resolve the issue by having the town declare a moratorium on fees for all handicapped parking.

An advocate from central Massachusetts contacted the Project for technical support and information concerning accessible town meetings. The advocate wanted to try to work with the town towards a resolution without directly involving this office. As he continues to negotiate with town officials for accessible meetings, the Project lends support by providing technical assistance and discussing strategy. Due to the efforts of the advocate, the town is making significant movement towards compliance.

LEGISLATIVE ADVOCACY

Fair Housing

10% Housing Cap I

Outside sections 162 and 291 of the Fiscal Year budget established a 10% cap on the number of disabled people who could reside in "elderly/handicapped" housing. We explained to legislators and later to Governor Weld why the 10% Cap appeared to violate state and federal law. As cited in his veto message, based in part upon our veto recommendation, Governor Weld vetoed the provision.

10% Housing Cap II

The same 10% housing cap, which was previously in the budget, was then grafted onto the housing bond bill. There was a legal question as to whether the 10% cap could be separately vetoed. We shared our view that it could be, and Governor Weld vetoed it.

Group Home Dispersal Bill

An outside section of the budget mandated a burdensome system of group home dispersal on EOHS. Our office shared our concerns as to the provision's legality and Governor Weld vetoed it.

COMMUNITY EDUCATION

When Attorney General Scott Harshbarger announced the establishment of the Disability Rights Project, he specifically emphasized the importance of community education. Toward that end, the Project has conducted more than 50 trainings and presentations. A few of the notable events include:

- 1) Welcoming remarks and talk on the Disability Rights Project at a conference sponsored by ACCESS NOW for individuals of color with disabilities and social service agencies and businesses serving that community;
- 2) Special membership meeting of the Cape Organization of the Rights of Disabled (CORD) where Attorney General Scott Harshbarger re-announced the establishment of the Disability Rights Project;
- 3) Keynote speaker concerning Disability Rights Project to 300 people at the Annual Consumer Conference sponsored by Massachusetts Rehabilitation Commission;
- 4) ADA update at Annual Convention to Town Counsel and City Solicitor's Association;
- 5) Presentation on "ADA and Libraries" seminar sponsored by the Social Law Library; and
- 6) Presentation on employment rights of individuals with disabilities on "Disability News"; a cable television show in Attleboro, MA.

While employment is not one of the Project's priority areas, we receive many calls seeking information and referrals to agencies which work on employment issues. In light of our commitment to community education, we felt it was important to provide these individuals with a general overview of employment rights. To address that need, we produced a booklet entitled, "Employment Rights of Individuals with Disabilities." We have distributed over 1000 copies of the booklet.

MATERIALS AVAILABLE

The following materials are available upon request:

- ▲ Questions and Answers on Title II of the Americans with Disabilities Act (Public Entities);
- ▲ Employment Rights of Individuals with Disabilities;
- ▲ Funeral Home AIDS Advisory (5/93);
- ▲ Municipal Access/Public Meeting letter (5/91); and
- ▲ Disability Rights Project Announcement Booklet.

To order any of the above materials, please call Robin D'Amelio, (617) 727-2200 (V), (617) 727-4765 (TTY).

FOR FURTHER INFORMATION

Attorney General Scott Harshbarger's Disability Rights Project, which is directed by Assistant Attorney General Stanley J. Eichner, will publish the **REPORT** twice a year. If you wish to contact the Project concerning an issue of disability rights, please call Karin Raye, Paralegal, at (617) 727-2200 (V), (617) 727-4765 (TTY) or write to Ms. Raye at:

Disability Rights Project
Civil Rights Division
Office of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108

If you wish to contact the Office of the Attorney General for information or assistance on a non-disability related matter, call Consumer Complaints at (617) 727-8400 (V), (617) 727-0434 (TTY).

Disability Rights Project **REPORT**
Editor, Karin L. Raye

Disability Rights Project
Office of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108-1698

THANKS!!!

The Project appreciates the effort of Suzanne John who generously volunteered her time and skill towards the production and layout of this newsletter. We would also like to thank all of the volunteers for their help with the Project.

We hope you enjoyed this issue of Attorney General Scott Harshbarger's
Disability Rights Project **REPORT**.

To join Attorney General Scott Harshbarger's Disability Rights Project mailing list or to notify us of a change of address, please use the form below:

Please make my copy: Large Print ☐
Audio Tape ☐

(please print)

If you have any comments or suggestions, please feel free to include them
on this form and return it to the Project.

Disability Rights Project **REPORT**

Office of Attorney General Scott Harshbarger

Fall, 1994

Massachusetts Civil Rights Act ("MCRA") Used To Protect Individuals With Disabilities

One reason why the Disability Rights Project was established within the Civil Rights Division was to underscore the important point that disability rights are civil rights. In addition to the symbolic importance of the Project's location, there have been substantive benefits in the cross fertilization of ideas and efforts between the Project and the Civil Rights Division.

A dramatic example of those benefits occurred this summer when the Disability Rights Project was contacted by a woman with a visual impairment, who complained that, at the end of her cab ride, the cab driver, Mr. Aghgolian, verbally assaulted her by shouting anti-disability epithets and injured her guide dog. An investigation of the facts revealed that both the victim and the dog were significantly traumatized by the incident. In fact, the guide dog was unable to work effectively as a result. Based upon that information, the Project prepared and filed legal pleadings in Norfolk County Superior Court seeking an injunction under the Massachusetts Civil Rights Act ("MCRA") ordering the defendant cab driver not to "threaten, intimidate or coerce" the victim or any

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Ensuring Access To Private Businesses

GOVERNMENT DOCUMENTS
COLLECTION

MAY 11 1995

Stop & Shop

Pursuant to a comprehensive agreement between the Disability Rights Project and Stop & Shop Companies, Inc., Stop & Shop implemented substantial architectural and physical renovations in their newly built stores and redesigned their prototype for all their future Massachusetts supermarkets to ensure full compliance with state and federal disability access laws.

The Disability Rights Project's agreement with Stop & Shop grew out of local advocates' complaints that some exterior features and certain interior elements of the newly constructed Malden Stop & Shop did not comply with state and federal access codes. Concerned with the possibility of non-complying new construction, the Project conducted a site inspection of the Malden store to determine the extent of the violations. The results of that survey caused the Project to examine other newly constructed supermarkets to determine the extent of the problems. While the number of violations decreased with the construction of each new store, the number of access concerns identified were significant enough to warrant pursuit of a broader agreement

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Dear Reader:

Welcome to the second issue of the Disability Rights Project REPORT. I am very excited to share with you the accomplishments of the Project since the last REPORT. Through our advocacy and education efforts, we have seen real progress in ensuring equal access to private businesses, municipal entities and housing for individuals with disabilities.

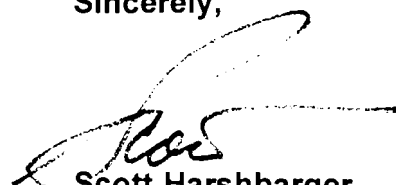
In our private business priority area, I am especially proud to report that the Project has attained comprehensive settlements and established industry-wide standards. (For specific details on those settlements see "Ensuring Access to Private Businesses" on page 1.) Our agreements with these businesses illustrate how the private sector and government can, by working together in a non-adversarial way, accomplish excellent results for both the business and disability communities. When I established the Disability Rights Project in June, 1993, this was precisely the role that was envisioned. By using our recent settlements as models, we anticipate that our Office and other advocates will be able to maximize the effect of those resolutions by persuading other similar businesses to follow suit.

As you may recall, when I established the Project, I stressed the importance of community education. The impact made through our publications and public speaking engagements has been significant. Businesses, municipal entities, non-profit organizations and persons with disabilities are proactively contacting us to learn about their legal rights and obligations under state and federal law. I encourage you to take advantage of the excellent new publications created by the Project. A list of those materials is on page 9 of this REPORT.

Looking ahead, we continue to talk with various governmental and advocacy organizations about how to best work together on issue-spotting and statewide enforcement efforts. By continuing to build upon the network of advocates, we can best magnify the power and effectiveness of each advocate.

The Project wishes to express its appreciation to community advocates for the critical role they play in identifying key issues. As always, we encourage you to keep us apprised of your concerns and activities. We recognize how essential it is to the Project's success to maintain open lines of communication, and thus strengthen our partnership effort with the disability community. With your help, we will build upon the past achievements of the Disability Rights Project by continuing to aggressively pursue full and equal access to opportunities for individuals with disabilities.

Sincerely,



Scott Harshbarger

Massachusetts Civil Rights Act (continued from page 1)

other individual with a disability.

The MCRA was enacted in 1979 following the Massachusetts busing crisis as a vehicle to address hate crimes. Historically, the Office of the Attorney General has used the MCRA to protect victims of harassment and intimidation based upon the person's race, ethnicity, religion, sexual orientation or gender. Use of the MCRA to obtain protective injunctions has been particularly effective due, in part, to the threat of significant criminal penalties if the defendant violates the injunction.

After hearing oral arguments, Honorable Richard Chin issued the preliminary injunction prohibiting the cab driver from harassing, threatening or intimidating the victim or any other individuals with disabilities. Violation of the order by causing bodily injury could result in a maximum fine of \$10,000 and/or a state prison term of up to 10 years. A violation without bodily injury could result in a maximum fine of \$5,000 and/or a 2½ year term in a House of Corrections. The MCRA is an important tool to ensure that the legal rights of individuals with disabilities are not violated through the use of force or threats. Its aggressive use sends a strong message that such actions will not be tolerated in the Commonwealth.

Access to Private Businesses (continued from page 1)

addressing the company-wide store prototype.

Specifically, Stop & Shop agreed to implement a wide ranging series of physical modifications and internal alterations in the Malden store. Examples of these access improvements include the repositioning of the coffee grinding machine, deli ticket dispensers, soda dispensers, fire alarm pull mechanisms and fruit scales to a lower height to ensure that the mechanism or controls were within reach of persons with disabilities. The counters provided at Pizzeria Uno's and the snack shop were rebuilt to the correct dimensions and installed at the appropriate lower height and the pharmacy employee door was equipped with an automatic door opener. For the safety of persons with hearing impairments, Stop & Shop installed visual fire alarms in the bathrooms, beverage coolers and bottle return rooms. All of the above access modifications were then incorporated into Stop & Shop's standard store design. In addition, Stop & Shop reconstructed approximately nine curbscuts and five sidewalks at the Malden store to comply with access regulations.

For all Massachusetts stores, the agreement with Stop & Shop involved reconstruction of certain exterior physical elements and modification of interior aspects. Some specific components of the agreement include:

- To allow patrons to get closer access to the deli counter, Stop & Shop will remove one bread rack from in front of the deli counter, install railing and post appropriate signage to ensure that the accessible portion

(continued page 4)

Access to Private Businesses (continued from page 3)

remains open at the Malden, Kingston, Dorchester, and Mashpee stores. All new stores opened after the date of the agreement will replicate those modifications.

- Stop & Shop has made the supplier of bottle return machines redesign its product so that the controls are within reach of customers with disabilities.
- Stop & Shop has agreed to provide vertical access via elevators to both front and rear mezzanines in all stores opened after January, 1995.
- Stop & Shop has agreed to redesign their accessible parking spaces so that people who use wheelchairs will be able to travel safely in front of the parked vehicles. The new design will be implemented beginning with all stores opening in Fall, 1994.
- Stop & Shop has required the supplier of handrail fixtures to redesign its handrails and will install the handrails according to regulations.
- The design of the front sidewalk has been widened to comply with the 48 inch width requirement.
- Stop & Shop agreed to issue a memorandum to appropriate personnel to address

problems caused by the failure to maintain the accessible features within each store. Examples include the maintenance of 36 inch accessible routes between displays, adequate open space around telephones, water fountains and tables and lowered produce scales.

Spooky World

Under an agreement obtained by Attorney General Scott Harshbarger's Disability Rights Project, Spooky World, the Halloween theme park, reopened on September 30, 1994, featuring rebuilt and renovated facilities and amusements which afforded full and equal access for persons with disabilities.

Prompted by consumer complaints that Spooky World was not fully accessible to persons with disabilities, the Disability Rights Project, working in conjunction with the Massachusetts Office on Disability, conducted an in-depth site review of the facilities, which confirmed that many of the features did not afford full access. After reviewing the results of the site inspection with Spooky World management, they agreed to a rigorous work schedule which ensured that the necessary renovations would be completed in time for the park's 1994 season.

One difficulty of this case involved the application of state and federal access requirements to what was essentially a farm setting. Under the terms of its agreement with the Disability Rights Project, Spooky World:

- Built accessible pathways that connect all essential elements of the park;
- Designed and built accessible

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Spooky World

(continued from page 4)

parking spaces;

- Built a ramp to create access to its hay wagon. In addition, the hay wagon itself was redesigned to include a center partition and straps that are used to secure wheelchairs safely;
- Lowered each "haunt" or scare scene in the Haunted House to afford improved visual access;
- Built a lengthy outdoor ramp to provide access from the lower level near the Haunted House, to the upper level, where the Horror Museum is located;
- Installed visual fire alarms in all buildings to serve patrons with hearing impairments;
- Lowered service counters, pay telephones and ticket windows;
- Reconfigured all building entrances through the construction of ramps or sloped inclines; and
- Redesigned all food stands with lower counters.

We hope that the results of this agreement, which establishes disability access model for theme parks, will be useful to advocates who are working with other amusement parks.

Wang Center for the Performing Arts

The Disability Rights Project received a complaint from an advocate who raised concerns that some policies and physical aspects of the Wang Center for the Performing Arts did not fully comply with the state and federal disability requirements. After conducting a survey of the theater's facilities and reviewing ticket purchase policies, the Project confirmed that certain access improvements were necessary for the Wang Center to be fully accessible. When we discussed our findings with members of the Wang Center staff, it was evident that they were interested in exploring possible resolutions.

Under federal and state law, theaters must provide a certain number of accessible seats, dispersed throughout the theater, based on their total number of seats. Following a series of discussions and meetings, the Wang Center agreed to increase access to their theater by adding two accessible seats and two companion seats. Previously, most of the accessible seats offered by the Wang Center were located at the very front and back of the theater. The new seats will be located in the center of the theater to ensure that individuals who use wheelchairs can choose from the same range of seat locations as the general public. Another regulation requires theaters to provide a "reasonable number" of seats with removable armrests. The Wang Center agreed to install four seats with removable armrests during the current fiscal year and after an evaluation period, consider increasing the number in following years. They have also altered their advance ticket purchase policy to ensure equal access for persons seeking to purchase accessible seating. To get more specific information about the agreement, please contact this Office or the Wang Center. We hope that this agreement will set an example for other theaters as they work toward compliance with the disability access

(continued page 6)

The Wang Center

(continued from page 5)

requirements.

In addition, although not as part of their agreement with this Office, the Wang Center has initiated their own access improvements. For example, an FM assistive listening system has been installed in the theater and plans have been made to purchase a test telephone (TTY) to enhance communication access. In addition, arrangements have been made with their ticket distributors so that accessible seats can be purchased through that medium. Furthermore, the Wang Center has made considerable efforts to solicit input from the disability community as they work to enhance their access. On June 22, 1994, the Wang Center sponsored an "Access to the Arts" symposium at which advocates were invited to share their thoughts and concerns about the accessibility of performing arts.

Plymouth & Brockton Bus Company

The Disability Rights Project reached a settlement with Plymouth & Brockton Bus Company ("P & B") in which they agreed to modify their policy and practice for the provision of accessible bus service. The issue of accessible bus scheduling, which was brought to our attention by CORD (Cape Organization for the Rights of the Disabled), grew out of the concern that P & B's existing policy of requiring a 24-hour advance reservation prevented CORD members from effectively being able to use P & B. The problem was particularly acute when members wished to use accessible buses going to and from Logan Airport or Boston.

Under the new policy, P & B has agreed to reduce the advance notice requirement for arranging a lift-equipped

bus. Rather than 24 hours in advance, a person may now call by 5:00 p.m. of the prior business day to arrange for such a bus. In addition to reducing the advance notice requirement, P & B has taken a number of steps to ensure that no one is stranded at Logan Airport or in Boston. Upon request, P & B will also schedule an accessible bus to be the last scheduled run from Logan or Boston. P & B also agreed that, where an individual is unable to link up with a previously scheduled lift-equipped bus leaving the airport or Boston, the bus company will use its best efforts to "hold" that lift-equipped bus until the person arrives at the airport.

P & B has agreed to continue, on an ad hoc basis, to try to respond as fully and flexibly to requests from individuals with disabilities who are seeking transportation service from Plymouth & Brockton. Both Plymouth & Brockton and the Attorney General's Disability Rights Project will be involved in broadly disseminating the modified policy.

Patrick's Pub

The Project received a complaint that a restaurant failed to provide, upon request, additional lighting to individuals with visual and hearing impairments. We sent a letter to the restaurant outlining their obligation under the Americans With Disabilities Act to provide, upon request, auxiliary aids and services to enable equal enjoyment of goods and services and to promote effective communication. The Pub responded to our letter by installing additional lighting in their facility and agreeing to provide, upon request, extra table lighting.

BayBank

An example of businesses proactively contacting us regarding their legal obligations was BayBank's inquiry about identification for check cashing and other bank business. The Project prepared a packet which outlined state

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BayBank

(continued from page 6)

and federal laws regarding the legal parameters for alternative types of identification acceptable for bank business. Using the information we provided, BayBank is voluntarily redrafting their policies to ensure non-discrimination against individuals with disabilities.

Municipal Access

The Disability Rights Project has continued to make significant strides in the access to municipal events, services and programs priority area. The Project received complaints from the citizens in the following municipalities: Canton, Chelsea, Easthampton, Essex, Provincetown, Southboro, Sturbridge, Templeton, Tisbury, Warren, Westport, and Woburn, who complained that the public meetings were being conducted in physically inaccessible locations. In each instance, the Disability Rights Project contacted municipal officials and requested that they cease convening public meetings in those locations. The officials responded immediately by moving all open meetings conducted by local committees and boards to alternative accessible facilities. The Project has also worked with the towns to establish policies which ensure that all municipal services are provided in an accessible manner. In addition, a number of towns have allocated substantial sums of money for accessible renovations that will afford access to their town buildings.

Fair Housing

270 Huntington Avenue

A building with approximately 90 condos

located at 270 Huntington Avenue in Boston was being redeveloped to house (a) individuals with AIDS, (b) individuals with mental disabilities, and (c) working poor. The proposed plan had encountered opposition from one of the condominium owners and one of the institutions in the neighborhood. The condominium owner had filed a lawsuit against the development arguing that the value of his investment would deteriorate due to the changed character of the proposed residents. Members of the Attorney General's group home task force met with the condominium owner and his attorney to express our concerns about the legal ramifications of his state court suit under the Federal Fair Housing Act. We then facilitated a meeting with the owner and the developer which resulted in the resolution of the lawsuit. We later met with representatives of the neighboring institution to listen to their concerns about the 270 Huntington Avenue development. We sent a follow-up letter which described possible fair housing implications of attempts to interfere with the establishment of the project. The institution did not pursue any further action, and the development had its financial closing and moved forward on the renovation of the building with an expected opening date of January 1, 1995.

Saugus Commons

The Disability Rights Project received a complaint from an individual who uses a wheelchair who complained that his ability to travel to and from his apartment complex was significantly hindered by speed bumps located in the driveway. Although the management company had accommodated the individual's request by cutting out portions of the speed bumps on one side of the driveway, patrons continued parking cars there, blocking the accessible route. We sent a letter to the management company outlining their legal responsibilities both to accommodate this

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Saugus Commons

(continued from page 7)

individual by removing physical barriers and to maintain accessible features. Upon receipt of our letter, management responded immediately by cutting out portions of the speed bumps on the opposite side, striping the access route and installing "No Parking" signs.

Community Education

The Project continues to maintain its commitment

to be actively involved in community education. A few of our recent training events include:

- Presentation on "ADA and Health Care" at the Massachusetts Bar Association's continuing legal education program on physician licensing, credentialing and discipline.
- Wrote a chapter on "Legal Rights of Individuals with Disabilities in the School Context" and was a panelist at MCLE conference on School Law.
- Wrote a chapter on Title II of the ADA and Municipal Law for inclusion in MCLE book on Municipal Law, in conjunction with a MCLE conference in April.
- Presentation on the Disability Rights Project on READY, WILLING, ENABLE, a cable television show in Marblehead, Massachusetts.
- Conducted a joint training with Massachusetts Commission for the Deaf and Hard of Hearing to

City Year on the rights of individuals with disabilities in an employment capacity and the appropriate way to deal with requests for accommodation.

- Presentation on "ADA and Environmental Issues" at National Environmental Conference at Tufts University.
- Presentation on ADA issues as part of a "Hot Issues in the Municipal Workplace" panel at the Attorney General's Fourth Annual Municipal Forum.
- Gave talk on Disability Rights Project at the Annual Meeting of the Gardner Athol Area Mental Health Center.
- Moderator and panelist on Disability Rights Enforcement Effort Panel at the First Annual National Association of Attorneys General Civil Rights Conference.
- Spoke on Employments Rights for Individuals with Disabilities at the Association of Community Health Centers' Annual Convention.

Project Award

In April of this year, Attorney General Scott Harshbarger was the recipient of the 1994 Access Plus award for distinguished public service in promoting the rights of people with disabilities. The award was presented by the Stavros Center for Independent Living at its First Annual Access Plus Award ceremony. "It is a great honor to be recognized by members of the disability community in this way," Attorney General Scott Harshbarger said at the event. "I am proud and honored to be the first recipient of this special award."

Materials Available

The following new booklets are available:

- The Rights of Individuals with Disabilities in the School Context; and
- The ADA and Municipal Issues

The following materials continue to be available upon request:

- Employment Rights of Individuals with Disabilities;
- Questions and Answers on Title II of the Americans with Disabilities Act;
- Funeral Home AIDS Advisory;
- Municipal Access/Public Meeting letter; and
- Disability Rights Project Announcement Booklet.

To order any of the above materials, please call Christine Heneghan at (617) 727-2200 (V) or (617) 727-4765 (TTY).

For Further Information

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Disability Rights Project **REPORT**
Editor, Karin L. Raye

We hope you enjoyed this issue of Attorney General Scott Harshbarger's Disability Rights Project **REPORT**.

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Name: _____

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If you have any comments or suggestions, please feel free to include them on this form and return it to the Project.

Thanks!!

The Disability Rights Project continues to benefit enormously from the generous volunteer assistance of many people. We particularly wish to express our appreciation for the outstanding efforts of Jon Delman, Esq., Assistant Attorney General Anne Berlin, Tamara Smith and Ned Menoyo.

**Disability Rights Project
Office of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108**

Disability Rights Project **REPORT**

Office of Attorney General Scott Harshbarger

Project Director - Stanley J. Eichner

Summer, 1995

Massachusetts Files Amicus Brief In U.S. Supreme Court Urging Continued Strong Interpretation of the Federal Fair Housing Act

Last November, the Attorney General's Community Residence/Fair Housing Task Force noted with some concern that the United States Supreme Court had agreed to review a very favorable fair housing decision (Edmonds) of the Ninth Circuit (the Federal Court of Appeals which covers states on the west coast). Recognizing that a reversal of the Ninth Circuit's decision would be a significant setback for fair housing rights of individuals with disabilities, our Task Force felt compelled to present to the Court the states' interest in affording a full continuum of housing opportunities for individuals with disabilities, including community residences for individuals with a wide range of disabilities.

The case of City of Edmonds v. Oxford House resulted from the efforts of Oxford House, a non-profit organization which establishes residences for individuals in recovery from alcohol or substance abuse, to locate in the Edmonds residential zone. Edmonds' zoning code limited homes in residential zones to "single family

(continued page 3)

Project Files Lawsuit To Redress Access Issues at Hotel and Trade Center

Beginning in March, 1994, the Massachusetts Office on Disability ("MOD") began to work with the Royal Plaza Hotel and Trade Center, located in Marlboro, Massachusetts, in an attempt to help them voluntarily correct existing access violations throughout their facilities. After the issues were unable to be resolved at that level, MOD contacted the Disability Rights Project for assistance in the matter.

The Royal Plaza Hotel and Trade Center is a large facility which is the site of many conferences and trainings. The hotel and trade center were constructed in a series of phases, beginning in 1984 with the main hotel building and ending with the trade center in 1990. Under Massachusetts law since June 1975, publicly or privately financed buildings, open to and used by the public, are required to comply with the rules and regulations of the Architectural Access Board ("AAB"). The AAB regulations specifically require that in hotels, built after June 10, 1975, "containing 20 or more units, at least 5% of the units and the public areas shall be accessible." 521 C.M.R. § 7.1.

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GOVERNMENT DOCUMENTS
COLLECTION

NOV 10 1995

University of Massachusetts
Secretary's Copy

Dear Reader:

Welcome to the third issue of the Disability Rights Project REPORT. June marked the second anniversary of the Project, an exciting milestone and an occasion to reflect back upon the accomplishments of the Project. I am pleased that the Project has been effective in resolving such a wide range of disability rights issues. Our educational and advocacy efforts have increased the awareness of public and private organizations and resulted in greater physical, communication and program access.

One notable accomplishment of the Project was the writing and filing of an amicus brief with the United States Supreme Court on behalf of fair housing rights for individuals with disabilities. The case involved the rights of individuals with disabilities who live in community residences to reside in the community of their choice. Our ongoing fair housing work compelled us to provide an overview of the states' involvement and interest in the provision of community residences for all people with disabilities.

As many of you know, I have emphasized the importance of working with public and private entities in a non-adversarial way. This strategy has resulted in successful settlements with numerous private businesses and municipalities. This spring, however, when the Project was unable to resolve access issues satisfactorily with a hotel, the Office filed its first lawsuit against the Royal Plaza Hotel and Trade Center in Marlboro, Massachusetts. The Royal Plaza suit makes clear that although my office will sincerely strive to achieve a satisfactory informal resolution of a matter, where those efforts are not productive, we will vigorously pursue judicial enforcement of those legal rights.

During the most recent period, we have also focused on several matters involving transportation, an issue identified by members of the disability community as a key one. The results of these settlements should improve the availability of accessible transportation across the Commonwealth.

As many of you know, Karin Raye, the paralegal with the Project these past two years is leaving to attend law school. All of us will miss her and her excellent work on behalf of individuals with disabilities. We wish her the very best in school and look forward to her work as a lawyer in the public interest.

As I have previously emphasized, the effectiveness of the Project is directly related to the consistent and strong support it has received from the disability community. I look forward to our continued partnership effort to ensure equal opportunity for all Massachusetts citizens.

Sincerely,



Scott Marshbarger

Federal Fair Housing Act (continued from page 1)

residences", which were defined as allowing an

unlimited number of related individuals, or a maximum of 5 unrelated individuals. To be financially and programmatically viable, Oxford House requires 8-10 residents. Following Edmonds' enforcement of its zoning ordinance, the federal litigation commenced.

The City of Edmonds successfully argued in federal court that the City's zoning code family definition fell within a narrow exemption of the Federal Fair Housing Act ("FHA"). Oxford House successfully appealed the case to the court of appeals, arguing that Edmonds zoning code was subject to review under the FHA, which requires the town to afford a reasonable accommodation to the Oxford House residents.

In December, 1994, a multi-bureau team of attorneys from the Disability Rights Project, the Consumer Protection Anti-Trust Division and the Government Bureau began to research and draft an amicus (friend of the court) brief. In addition to the time required to write the brief, considerable time and energy had to be spent contacting each of the states for two reasons: first, we needed to compile information regarding each state's zoning codes and statutes to make the brief as representative as possible of the facts nationally, and second, we had the challenge of convincing as many states as possible that they should join the Massachusetts brief, which argued in favor of an expansive reading of a federal civil rights statute.

In January, 1995, we filed an amicus brief with the United States Supreme Court on behalf of Massachusetts and 14 other states in support of Oxford House. The brief argued that an interpretation of the Federal Fair Housing Act which exempted local zoning ordinances that limit the number of unrelated individuals who can

reside in a single-family zone from its coverage would deprive the states of a significant tool to combat barriers to the establishment of such residences.

Our brief was well received by respondents, Oxford House and the Justice Department and one of our key points was incorporated into their briefs. We were invited to attend Oxford House's moot court and also attended the March 1 oral argument. On May 15, the Supreme Court held in favor of Oxford House and Department of Justice. The Court's 6-3 decision, written by Justice Ginsburg, affirmed the decision of the Ninth Circuit, recognizing that family composition rules such as the Edmonds zoning ordinance can be scrutinized to determine whether they have a discriminatory effect in violation of the FHAA.

Two additional points are worth noting:

Edmonds is a profoundly important fair housing case for a number of reasons, not the least of which is that the holding would affect not only housing for people who have had a history of substance abuse, but community residences for individuals with all types of disabilities, including mental retardation, mental health, AIDS, and Alzheimer's disease. It was the first Supreme Court decision interpreting the FHA since the statute was amended to include individuals with disabilities as a protected category.

This case comes at a time when, as many of you know, there has been widespread backlash against community living opportunities. A strong 6-3 decision, which upholds the purpose and scope of the FHA, delivers an important message at a critical time. Conversely, if the decision had gone the other way, every municipality that wished to exclude one or more of the above groups would only have needed to pass an Edmonds type ordinance.

It was quite exciting to be involved in a case with such widespread impact and we have already used the Court's strong decision in our ongoing fair housing efforts.

Higher Education Advisory/Prohibited Preadmission Inquiries

The Disability Rights Project became concerned that some colleges and universities in Massachusetts were requesting information pertaining to disabilities on their admission applications in violation of Section 504 of the Rehabilitation Act of 1973. In addition to seeking information from universities and colleges regarding the inclusion of such disability inquiries, the Project also contacted the Association of Independent Colleges and Universities in Massachusetts ("AICUM") for their input and assistance. The Project then incorporated suggestions from those entities into an advisory which was sent to 250 colleges and universities across the state. The advisory discussed the applicable statutes, relevant cases, and possible solutions in an effort to assist colleges and universities to create applications that comply with the disability laws.

We received an extremely positive response from educational institutions throughout the state. Some schools contacted the Project to express their appreciation for our effort to educate and inform the schools about their legal obligations while others have specifically consulted with us on how best to comply with the federal nondiscrimination requirements. If you would like a copy of the advisory, please contact Christine Heneghan at (617) 727-2200 (V) or (617) 727-4765 (TTY).

Transportation Issues

Red Cab Company

As a result of the news reports on our Massachusetts Civil Rights Act case

against the cab driver who violated the civil rights of a woman with a visual impairment (see "MCRA Used to Protect Individuals with Disabilities" in the Fall, 1994 issue), we received a complaint from a different woman who was blind alleging that taxicab drivers from the Red Cab Company had refused, on several occasions, to transport her after discovering that she was accompanied by a guide-dog. We met with the company and they agreed to implement an employee education program which would inform all dispatch staff, drivers and all newly hired staff as to their legal obligation, as agents of a public accommodation, not to discriminate on the basis of a disability.

Bonanza Bus Company

A woman with a visual impairment complained to the Project that she had experienced ongoing difficulties with Bonanza Bus Company, particularly with employees who were unwilling to assist her in boarding and disembarking the bus, locating available seating, and retrieving her luggage. Following our meeting with representatives of the company, Bonanza implemented an extensive training program for all of their employees to provide them with information concerning customers with disabilities, including those who have visual impairments, particularly as it might affect their access to transportation services. Bonanza has also issued formal policies regarding designation of priority seating for customers with disabilities, luggage storage and retrieval, and passenger assistance in boarding and disembarking a bus.

Peter Pan Trailways

An individual who uses a wheelchair contacted the Project to complain about Peter Pan Trailway's policy of requiring that a person who needs to ride a lift-equipped bus make a reservation three days in advance. She also experienced difficulties when, despite having made a timely

(continued page 5)

Transportation Issues (continued from page 4)

reservation and being informed that her reservation was set, the scheduled bus did not arrive, leaving her stranded. We met with company representatives, who agreed to reduce the advance reservation requirement to 24 hours, and to institute a system for ensuring that reservations would not be lost or ignored.

Access Issues

Springfield Civic Center

The Disability Rights Project received a complaint from a veteran with a mobility impairment who had attended a hockey game at the Springfield Civic Center on Veteran's Day. He alleged that his seat was often blocked by patrons congregating in front of him, making it difficult to view major portions of the game. The Project contacted the Civic Center and then met with Centre Management Company and the City of Springfield to survey the facility.

Under state and federal law, arenas are not only required to have a specific number of accessible seats, but also must disperse those seats throughout their arena to provide persons with disabilities choices in location and site lines. In their settlement with the Disability Rights Project, Centre Management and the City of Springfield agreed to install additional accessible seating which is dispersed throughout the arena. The settlement also clarified the Civic Center's ticket policy to ensure that accessible seating would be available to individuals with disabilities on an equitable basis.

Movie Theaters

The Project was contacted by an individual with a hearing impairment who spends summers on Martha's Vineyard. The person complained that none of the three movie theaters located on the island were equipped with assistive listening systems ("ALS"). The absence of ALS in theaters makes it virtually impossible for people with hearing impairments to hear any of the dialogue from the movie. Under the Americans with Disabilities Act ("ADA"), movie theaters, as Title III entities, are required to ensure that no individual with a disability is denied services because of the absence of auxiliary aids, unless the provision of such aids or services would result in an undue burden for the entity involved. 28 C.F.R. § 36.303. We learned that all of the theaters were owned by one person and contacted that individual to discuss his legal obligations under Title III of the ADA. The theater owner immediately agreed to install ALS in each theater prior to this season's opening of each facility.

School Issues

Hingham Public School

We received a complaint from a woman with Multiple Sclerosis who was concerned that she was unable to ensure her son's safety while he waited for the school bus. The mother's request, that the Hingham Public School move the location of her six year old child's bus stop to a less trafficked area which could be seen from the mother's home, was denied by the school. We contacted the school administrator and discussed the school's obligations under the ADA and § 504, urging them to seek a resolution with the mother. Within two days, the school system informed us that they had agreed to relocate the bus stop to the front of the family's house.

Provision of Interpreters

We were contacted by a parent with a hearing impairment who complained that the Harwich Public School had failed to provide him with an American Sign Language interpreter for his children's school events. According to Title II of the Americans with Disabilities Act, schools must furnish auxiliary aids and services when necessary to provide effective communication for persons with disabilities. Because the school was not disputing its obligation to provide an interpreter for the parent, the absence of an interpreter appeared to be the result of an administrative or policy lapse. The Disability Rights Project wrote a letter to the superintendent of schools requesting that they establish and disseminate a formal policy which outlined the appropriate way to procure an interpreter. The school responded by clarifying and circulating the policy and instructing their staff to adhere to the correct procedure.

Legislation

In addition to our role in ensuring that public and private entities comply with state and federal disability rights and civil rights statutes, the Disability Rights Project is also active in the development of public policy which affects individuals with disabilities. To that end, Project staff prepared written testimony concerning a number of legislative proposals in an effort to express the support or concerns of the Attorney General.

- **Public Accommodations Amendment SBI 42**
On March 24, 1995, the Office submitted written testimony in support of SB 42, which would amend the Massachusetts Public Accommodations statute to make it consistent with the requirements of

Title III of the ADA.

- **Tenant Selection Bill H 4752**
On March 29, 1995, the Office of the Attorney General submitted testimony on this bill to address the ongoing concern about the safety of elders in public assisted housing developments. Our testimony recognized the importance of protecting those tenants from improper conduct, while safeguarding the fair housing rights of individuals with disabilities.
- **Special Education Bill H 1448**
On April 6, 1995, Project staff submitted testimony concerning the Governor's proposed amendment to the special education bill. We attempted to identify those parts of the bill that arguably conflicted with the requirements of the federal special education statute.

Royal Plaza (continued from page 1)

Despite an extensive joint effort by MOD and the Project to resolve the access violations informally, we were unable to achieve a satisfactory resolution. On March 16, 1995, the Project filed a complaint in Middlesex Superior Court against the Royal Plaza Hotel and Trade Center for violation of the AAB regulations, the ADA access requirements and Massachusetts General Law Chapter 93A. The complaint cited more than 80 violations of both the AAB and the ADA throughout the hotel and trade center facilities.

Materials Available

The following new publications are now available:

- ✓ **Advisory to post-secondary colleges and universities regarding prohibited preadmission disability related inquiries**

Materials Available (continued)

- ✓ City of Edmonds v. Oxford House
Massachusetts Supreme Court Amicus Brief

The following publications continue to be available:

- ✓ The Rights of Individuals with Disabilities in the School Context
- ✓ The ADA and Municipal Issues
- ✓ Employment Rights of Individuals with Disabilities
- ✓ Questions and Answers on Title II of the Americans with Disabilities Act
- ✓ Funeral Home AIDS Advisory
- ✓ Municipal Access/Public Meeting letter
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Disability Rights Project REPORT

Karin L. Raye, Editor

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Thanks!!

The Disability Rights Project continues to enjoy the excellent work and commitment of those who volunteer their time and energy to help us on the Project. We would like to express special thanks to Northeastern University law student Bess Karger, who worked tirelessly on our Edmonds brief, and Harold Tafler, who helped us immensely during his internship with the Project.

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